IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sohan Das & ors. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 113/2004
against the order dated 6-11-2003 passed
by the Additional Sessions Judge, Sojat,
district Pali, in Cri. Revision No.20/1999.

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Date of Order: December 19, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. R.s. Chundawat, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Devendra Singh for Mr. Sandeep Mehta, for the non-petitioners No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 6-11-2003 passed by the Additional Sessions Judge, Sojat, district Pali (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by the non-petitioner No.2 against the order dated 17-8-1999 passed by the Sub-Divisional Magistrate, Sojat, district Pali (for short, "the Executive Magistrate" hereinafter) was allowed and the order of the Executive Magistrate dated 17.8.1999 was set aside and it was directed that the subject-

matter of the dispute i.e. the land in question, be handed over to the non-petitioner No.2.

I have carefully gone through the orders passed by the Executive Magistrate as well as the Revisional Court.

Before the Executive Magistrate, the non-petitioner No.2 produced the oral as well as documentary evidence. In the documentary evidence, a sale deed in favour of non-petitioner No.2 was produced showing therein that the subject-matter in dispute has been purchased by her by a registered sale deed and thereby from the date of purchase of the land in dispute, the non-petitioner No.2 is in possession of the land. The Naib Tehsildar, who was appointed as the Receiver by the Executive Magistrate, took the possession of the land in dispute vide EX.P/1. In EX.P/1, it has not been stated as to which of the parties was in possession of the land at that time. Even there is no mention in EX.P/1 that the Receiver took the possession from which of the parties.

From the oral and documentary evidence, the non-petitioner No.2 has established that on the relevant date of passing the preliminary order under sub-section (1) of Section 145 of the Code and two months prior to that, she was in possession of the land in dispute as its owner. The Executive Magistrate declared the petitioner as in possession of the land two months prior to the date of passing the preliminary order.

That order was contrary to the oral and documentary evidence available on record and, therefore, the Revisional Court set aside the order of the Executive Magistrate.

In compliance of the order of the Revisional Court dated 6-11-2003, the possession of the subject matter of dispute has been handed over to the non-petitioner No.2 and since then she is in possession of the land in dispute. In the circumstances, therefore, in my view, the Revisional Court was justified in setting aside the order of the Executive Magistrate by allowing the revision petition filed by the non-petitioner No.2. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court warranting interference in the inherent jurisdiction.

The criminal miscellaneous petition has no merit and it is dismissed accordingly. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs